IN THE SUPREME COURT OF THE UNITED STATES

LEON WEBSTER QUILLOIN,

Appellant,

Vs. CASE NO. 76-6372

ARDELL WILLIAMS WALCOTT,
and, RANDALL WALCOTT,

Appellees.

MOTION TO DISMISS

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INTRODUCTION

Appellees in the above-entitled case move the Court to dismiss this appeal on the ground that the Federal question presented is so unsubstantial as not to need further argument.

STATEMENT OF FACTS

The statement of facts contained in Appellant's Brief is incomplete and inacurate because the following important facts were omitted or incorrectly stated:

1. Appellant LEON WEBSTER QUILLOIN, has never supported the child in this case, DARRELL W. QUILLOIN, on a regular basis. R-34, T-9, T-32, T-36, 77.

2. Appellant never attempted to legitimate the minor child or to obtain visitation rights that would allow him to visit the minor child prior to the filing of Appellees' Petition for Adoption in this case. R-35, T-66.

3. It is the wish of the minor child, DARRELL W. QUILLOIN, that he be adopted by Appellee RANDALL WALCOTT. R-35, T-80.

ARGUMENT SUPPORTING THE POSITION THAT THIS APPEAL DOES NOT PRESENT SERIOUS AND SUBSTANTIAL FEDERAL QUESTIONS

Appellant contends that the applicable Georgia statutes in this case as applied to him constitute violations of the due process and equal protection clauses of the Constitution of the United States and that this conclusion is based on the case of Stanley v. Illinois, 405 U.S. 645 (1971). In that case, this Court held that where the natural mother of illegimate children was dead, the biological father of these children was entitled to a hearing before custody of the children could be given to the State. This Court based its decision on the fact that the due process and equal protection clauses required a hearing before the father's children could be taken from him.

Appellees submit that Stanley is inapplicable here because it can be distinguished on a number of very important factual grounds. First, unlike Stanley, the mother in the instant case is alive and is living with the child, along with her husband who is the original petitioner for adoption in this case. Secondly, Stanley involved a contest between the biological father of illegimate children and the State. This case involves a contest between the biological father of an illegimate child and the stepfather with whom he has been living. In the instant case, the child will remain in the normal family environment that he has become accustomed to, whereas in the Stanley situation, the children would be placed in a State institution or a foster home.

Perhaps the most important factual distinction between the instant case and Stanley is that, in Stanley the father, mother, and children had lived together as a family prior to the mother's death. Id at 646. This Court felt that this was an extremely important factor since the father was living with the children at the time of the mother's death. Id, n.4 at 650. This situation is obviously different from the instant case where Appellant has never lived with the minor child on a regular basis.

The most important factor which takes this case out of the Stanley situation is the existence of a Georgia statute by which the father could legitimate his illegitimate minor child. It should be noted at this point that Illinois did not have such a legitimation statute at the time of Stanley. Illinois does have a statute which deals with the legitimation of illegitimate children after the parents have entered into a ceremonial marriage. See Ill. Code Ann. 89 §17(a).

Ga. Code Ann. §74-103 provides for legitimation by petition of the punitive father and reads as follows:

> "A father of an illegitimate child may render the same legitimate by petitioning the superior court of the county of his residence, setting forth the name, age, and sex of such child, and also the name of the mother; and if he desires the name changed, stating the new name, and praying the legitimation of such child. Of this application the mother, if alive, shall have notice. Upon such application, presented and filed, the court may pass an order declaring said child to be legitimate, and capable of inheriting from the father in the same manner as if born in lawful wedlock, and the name by which he or she shall be known."

Appellee submits that this statute satisfies whatever due process requirement Appellant has in this case and that this requirement is not violated if the father does not chose to utilize the procedure set sorth in the above code section.

In his brief, Appellant argues that he should not be punished for not taking legal action which was totally unnecessary in the first place. See Appellant's Brief, pg. 13. This argument is untenable since the legal action would have availed Appellant of the very rights that he claims to be deprived of. Appellee submits that the instant case presents the situation where an individual has slept on the rights given him by law, rather than being denied these rights as Appellant contends.

It should be noted at this point that the Georgia legislature has taken steps to prevent any possible unfairness to a putative father in Appellant's position. The new Georgia statute which becomes effective January 1, 1978 provides for notice to the putative father and allows him thirty (30) days after the filing of a petition for adoption to file his petition to legitimate the child involved. Ga. Acts 1977, pg. 201. Appellee submits that this fact makes the question involved in this case more unsubstantial since the problem involved here will not arise again in Georgia after the above referenced statute takes effect.

In this case, it is undisputed that Appellant never attempted to legitimate the minor child prior to the filing of Appellee RANDALL WALCOTT's petition for adoption. Appellant has never attempted to obtain visitation rights to the minor child. T-10, T-66. He should not now be heard to argue that the decision of the Supreme Court of Georgia deprives him of the rights in the minor child when he failed to take the necessary steps to avail himself of these same rights.

Appellant makes the argument that Ga. Code Ann. §74-203 and §74-403 violate the requirements of due process of law and

equal protection because they classify all unwed fathers as unfit parents. However, this is not the case. These laws establish a valid category by separating fathers who have not acknowledged paternity of a minor child from those who have married the child's mother or legitimated the child.

It is obvious that the statutes above mentioned do not violate the due process clause of the United States Constitution. The Federal and State requirements of due process are satisfied if one is given notice and an opportunity for a hearing before he is deprived of life, liberty, or property. However, even the Court in Stanley acknowledged that due process of law does not require a hearing in every concievable impairment of a private interest. Id at 650. See also Cafeteria Restaurant Worker's Union, etc. v. McElroy, 367 U.S. 886 (1967).

Appellee submits that any due process requirement which does exist in this situation is satisfied by the existence of the above mentioned legitimation statute. Appellant argues that the only effective due process in this situation is by objecting in the adoption action. However, Georgia is not under any obligation to satisfy Appellant's asserted right to due process at that stage, and the statutory scheme which requires him to assert his rights prior to that time is permissible.

This Court has held that vindication of constitutional rights under the due process clause does not demand uniformity of procedure by all the States, but each State is free to devise its own way of securing essential justice. Hysler v. Florida, 315 U.S. 411 (1942). This Court has also held that the Fourteenth Amendment does not give Federal Courts the power to impose upon the States their views of a wise economic or social policy.

Dandridge v. Williams, 397 U.S. 471 (1970).

The equal protection clause of the United States Constitution requires that all persons shall be treated alike under like circumstances and conditions. However, it is not a demand that the statute necessary apply equally to all persons and does not require that things which are different in fact to be treated in law as though they were the same; hence, legislation may impose special burdens upon defined classes in order to achieve permissible ends. Rinaldi v. Yager, 384 U.S. 305 (1966). Equal protection does not mean that a State may not draw lines to treat one class of individuals or entities different from the others; the test is whether the difference in treatment is invidious duscrimination. Lehnhausen v. Lakeshore Auto Parts, 410 U.S. 356 (1973); Barrett v. Shiparo, 411 U.S. 910 (1973); Carrington v. Rash, 380 U.S. 89 (1966).

The majority decision of the Supreme Court of Georgia in this case expresses the State's legitimate concern in this situation: "Georgia has concern for the well-being of all its children. To further the protection and care of its children, Georgia favors and encourages marriage and child bearing in a family relationship. In the case of an illegitimate child, there is no marriage and, most frequently, there is no father to raise the child; instead there is only a mother. It is reasonable for Georgia to place full responsibility for the illegitimate child of the parent who is present. This placing of full parental power in the mother is consistent with the public policy favoring marriage and the family because the father can chose

to join the family, Code Ann. §74-101, or can petition to legitimate the child. §74-103.

In the usual case, if the mother of an illegitimate child decides not to raise the child herself and consents to adoption, the State's interest in promoting the family as an institution for child rearing is served since the child will be placed with the adopting family. If the consent of the natural father were also required he might refuse without accepting the responsibility of fatherhood, and the State could be required to sever his relationship before the adoption could proceed. In addition, since the father has already shown his lack of interest by his failure to legitimate the child, there would be a very real danger of profit seeking by the father in order to secure his consent to the adoption. Georgia's interest in seeing to the needs of children is served by the statutory scheme. When the illegitimate child's mother consents to adoption, the State and the mother's interest coincide and the child can be placed with a family.

The State's interest is even stronger under the facts of this case. For eleven (11) years the natural father took no steps to legitimate the child or support him. Yet when the stepfather, married to the child's mother, wishes to adopt the boy and accept responsibility for him, the natural father suddenly opposes legal recognition of this family unit." See majority opinion, pg. 4, 5.

This Court has held that the equal protection clause requires that, in defining a class subject to legislation, the distinctions that are drawn have some relevance to the purpose for which the classification is made. Rinaldi v. Yager, supra.

The statutory discrimination will not be set aside for violating the equal protection clause if any state of facts reasonably may be conceived to justify it. Dandridge v. Williams, supra. The State's interest expressed in the majority opinion certainly satisfies these requirements.

This Court has, on two occasions, declined to extend the rationale of Stanley. Rothstein v. Lutheran Social Services, 405 U.S. 1051 (1972); In Re Adoption of Malpica- Orsini, 36 N.Y. 2d 568, 370 N.Y.S.2d 511; 331 N.E.2d 486 (1965), appeal dismissed, 96 S.Ct. 765 (1976). The latter case involved an appeal from the New York Court of Appeals which involved a factual situation similar to the one in this case. This Court dismissed that case "for want of a substantial federal question".

CONCLUSION

In conclusion, Appellee submits that the Appellant had adequate opportunity to legitimate the minor child during the eleven years prior to the filing of Appellee RANDALL WALCOTT's petition for adoption. If he did not, he can not now be heard to argue that he has been deprived of his constitutional rights. If Appellant feels that he did not have proper notice in this case, Appellee would submit that he had notice for eleven years that he was the biological father of the minor child.

Appellee would also respectfully remind the Court that a decision in Appellant's favor would have a very unsettling effect on adoptions all over the nation. Many of these stable situations would be unsettled and perhaps destroyed if putative fathers were given veto power over adoptions which are in the best interest of the child. The motive of such a person who has not taken sufficient interest to care for the child must be

examined carefully. In many of these situations, including the instant case, the putative father seems more interested in obstructing an orderly situation rather than contributing to the child's welfare. The possibility of blackmail or other improper activities is also apparent in such a situation.

For the reasons above mentioned, Appellee respectfully requests that the Court dismiss this case for want of a substantial federal question.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this Motion to Dismiss on behalf of Appellees, by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon addressed to:

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&

Arthur K. Bolten, Attorney General
for the State of Georgia by serving
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This 10th day of May, 1977.

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